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No. 91-46

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In the Supreme Court of the United States

OCTOBER TERM, 1991

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
PETITIONER

v.

NATIONAL MEDIATION BOARD AND
NATIONAL RAILWAY LABOR CONFERENCE

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT NATIONAL RAILWAY LABOR CONFERENCE IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below properly declined to disturb the National Mediation Board's decision to continue mediation of petitioner's contract disputes with the nation's rail carriers, given the absence of any evidence of "patent official bad faith" in the Board's conclusion that there is a reasonable possibility that further mediation could result in a settlement.

LIST OF INTERESTED PARTIES

Respondent National Railway Labor Conference is an unincorporated trade association of the nation's major railroads. It has no parent companies or subsidiaries. The members of the NRLC are listed in the Appendix to this brief.

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BRIEF FOR RESPONDENT NATIONAL RAILWAY LABOR CONFERENCE IN OPPOSITION

STATEMENT OF THE CASE

Petitioner International Association of Machinists and Aerospace Workers (the "IAM") filed this action to complain about the decision by the National Mediation Board (the "NMB" or the "Board") to continue mediation of collective bargaining disputes between the IAM and the nation's rail carriers regarding, among other things, wages, work rules, and health and welfare benefits. The carriers are represented in those negotiations by a bargaining committee of respondent National Railway Labor Conference (the "NRLC").

The IAM has failed to describe adequately the procedural context in which it chose to file its lawsuit, and the relationship between this action and the recent national collective bargaining process, which involved not only the IAM but also eleven other unions that were negotiating with the nation's major rail carriers. We therefore review in some detail the origin and progress of those negotiations. This factual background strongly supports the NMB's decision to continue mediation of the disputes involving the IAM, and it thus helps to demonstrate that the lower courts' decisions are correct and review by this Court is not warranted.

A. Current Round of Negotiations

The current round of railroad negotiations started in the spring of 1988, when the IAM and eleven other unions served notices on the nation's rail carriers under Section 6 of the Railway Labor Act (the "Act"), 45 U.S.C. §§ 151-188 (1988), seeking changes in existing contractual provisions regarding wages, work rules, and health and welfare benefits. A. 35-37, 64-65.[1] The carriers promptly served Section 6 notices on the unions as well. *Id.* at 65. The notices served by the IAM and another union, the International Brotherhood of Electrical Workers (the "IBEW") were identical, and the two unions bargained jointly with the carriers. *Id.* at 7-8.

In October 1988, before the start of any substantive negotiations, the IAM notified the carriers that negotiations were at an impasse and that it would seek mediation services from the NMB pursuant to the Act.[2] A. 6,

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[1] "A." refers to the parties' appendix in the court of appeals. A copy of this appendix has been lodged with the Clerk of this Court.

[2] Active negotiations were delayed at the outset because the IAM and the IBEW filed a lawsuit challenging the NRLC's power of attorney to represent certain carriers. *International Brotherhood of Electrical Workers, et al. v. National Railway Labor Conference,*

100. The NMB docketed the mediation requests but refrained from intensive mediation so that the parties could engage in further negotiations.

Once active negotiations began in April 1989, the parties reached tentative agreements on some issues, but progress was slow on others. A. 68-69. In October 1989, the railroads and all of the unions concluded that the health and welfare negotiations had reached an impasse, and they so informed the NMB. A. 69-70; Pet. App. 4a. The Board began intensive mediation in early November 1989. A. 6, 70. NMB Chairman Joshua Javits participated directly in the mediation sessions. A. 70; Pet. App. 4a.

In February 1990, with no agreement yet in hand, the parties began to explore the possibility of submitting their disputes to a Presidential Emergency Board that would be created to address all outstanding contract issues. A. 71. On March 6, 1990, under the auspices of the NMB, the railroads and all of the unions except the IAM agreed to a comprehensive procedural proposal for resolving contract disputes on an industry-wide basis. A. 49-50. The procedural agreement anticipated the following essential features: (a) the NMB would release the parties from mediation and proffer arbitration on all issues in dispute, and the parties would decline to arbitrate; (b) the President would establish an emergency board that would investigate and report on all issues by September 15, 1990, unless more time was requested; (c) the parties would approve any reasonable request of the emergency board for more time to complete its hearings, mediation, and recommendations; (d) no party would resort to self-help until expiration of a 30-day period following release of the emergency board's final report; and (e) to give Congress an opportunity to intervene promptly in the event of a strike, no party would

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Civ. No. 88-2500-GAG (D.D.C.). The litigation was dismissed in December 1988. A. 98.

initiate self-help when Congress was not in legislative session. A. 108-109; Pet. App. 4a-5a.

Following acceptance of this agreement by the NMB, the carriers, and all unions other than the IAM, the NMB notified the participants that it was terminating mediation and proffering arbitration pursuant to 45 U.S.C. § 155 First. A. 111-114. In accordance with the procedural agreement, all participants rejected the proffer, and the NMB terminated its services to those parties. A. 116-121, 123-125. By Executive Order No. 12714, dated May 3, 1990, the President created Presidential Emergency Board ("PEB") No. 219 to consider and report on all issues in dispute. A. 73.

When the NMB, pursuant to the procedural agreement, released all unions other than the IAM from mediation, the IAM asked the Board to terminate mediation of the IAM's contract disputes as well. A. 21-25. In the IAM's case, however, there was no substitute procedure in place to fulfill the objectives of the Act, and the Board was not persuaded that further mediation would be futile. Accordingly, the NMB notified the IAM on April 5, 1990, that mediation would continue with respect to the IAM's contract disputes with the railroads. A. 26. The NMB informed the union that it would "continue to evaluate the IAM's status in the mediation process in a good faith effort to achieve the NMB's mediatory obligations under the [Act] . . . and [would] continue to re-examine the question of whether termination of statutory mediation assistance with respect to the IAM is warranted." *Id.*

B. Proceedings in the District Court

Soon after the NMB notified the IAM that mediation would continue, the IAM filed this action in the United States District Court for the District of Columbia. The IAM challenged the NMB's decision to continue mediation on two grounds. First, the IAM maintained that the procedural agreement violated the NMB's statutory dis-

cretion. Second, the IAM contended that an alleged statement by NMB Chairman Javits in February 1990, to the effect that mediation had failed, obligated the NMB to release the IAM from mediation under 45 U.S.C. § 155 First.

The IAM moved for preliminary and permanent injunctive relief, seeking to compel the NMB to terminate mediation and to proffer arbitration, thereby releasing the IAM to pursue self-help remedies. A. 11-13. The NMB opposed the IAM's motion for injunctive relief and moved to dismiss the complaint. A. 134-135. The NRLC intervened and supported the NMB's motion to dismiss. A. 200-201.

The district court granted the NMB's motion to dismiss, and denied the IAM's motion for injunctive relief. Pet. App. 11a. Relying on two leading D.C. Circuit decisions that strictly limit judicial review of NMB determinations, the district court held that the Act gives the NMB substantial discretion, and that the NMB did not abuse that discretion in deciding to continue mediation of the dispute between the IAM and the carriers. In a ruling from the bench without written opinion, the district court held that, although the IAM had no obligation to participate in the procedural agreement, neither did the NMB have any obligation to release the IAM from mediation. A. 197. The fact that other unions participating in the procedural agreement were released was not controlling, in the district court's view. Rather, the only issue was whether the NMB had properly concluded that mediation with respect to the IAM was not over. A. 193.

C. Proceedings in the Court of Appeals

The court of appeals affirmed the district court's dismissal of the IAM's complaint. Pet. App. 1a-10a. The court of appeals recognized that the scope of judicial review of NMB mediation decisions is " 'one of the narrowest known to the law.' " *Id.* at 5a, *quoting International Ass'n of*

Machinists v. Trans World Airlines, 839 F.2d 809, 811 (D.C. Cir.), *amended*, 848 F.2d 232, *cert. denied*, 488 U.S. 820 (1988) (*"Trans World Airlines"*). Only upon a showing of " 'patent official bad faith' " may a court interfere with the Board's mediation efforts. Pet. App. 6a. In the court's words, "the real 'key' [under the Railway Labor Act] is the Board's authority to hold the parties to a dispute in mediation so they cannot engage in self-help; it is a 'coercive tool essential to bringing the parties to conciliation.' " *Id.* at 4a, *quoting Local 808, Building Maintenance, Service & Railroad Workers v. NMB*, 888 F.2d 1428, 1432, 1438 (D.C. Cir. 1989) (*"Local 808"*).

The court of appeals correctly recognized that the procedural agreement between the eleven other unions and the rail carriers was a "mediation device . . . designed to settle a dispute without a strike." Pet. App. 6a-7a. The agreement did not violate any provision of the Act, and it did not offend any other law. *Id.* at 7a. Nor was the agreement imposed on reluctant participants by the NMB; the eleven unions and the railroads jointly reached the procedural agreement because it promised to help resolve their disputes. *Id.* at 4a; A. 71. The court of appeals therefore rejected the IAM's argument that the procedural agreement was "somehow improper." Pet. App. 6a.

The court then turned to the "crux" of the IAM's argument—the alleged remark by NMB Chairman Javits that mediation had failed. The court ruled that that remark is not "a hook strong enough to hold [petitioner's] case." Pet. App. 7a. The court cited five grounds for its holding.

First, the court said, the isolated remark of the Chairman cannot be attributed to the entire Board. Pet. App. 7a. Even if Mr. Javits made the alleged remark, he did not speak for the full Board, and the IAM has not even alleged that he acted with the Board's authority.

Second, the statement could have been a legitimate mediatory "ploy" uttered as "a tactic to spur negotia-

tions." Pet. App. 8a. The court of appeals ruled that it is "inappropriate ordinarily to review statements by individual members of the Board made in the course of dealing with the parties to determine whether the Board concluded or should have concluded that mediation will not be effective." *Id.* at 8a-9a.

Third, even if Mr. Javits made the alleged remark, he was merely stating the obvious—mediation up until that point in time *had been* unsuccessful. That fact, however, is not sufficient to trigger an automatic release from mediation pursuant to 45 U.S.C. § 155 First. As the court of appeals observed, the statute contemplates release from mediation only when the NMB has concluded that mediation "*shall be* unsuccessful." Pet. App. 7a (emphasis added), *quoting* 45 U.S.C. § 155 First. The Board reached no such conclusion here.

Fourth, the court of appeals ruled that, in any event, Chairman Javits' alleged statement would not be enough to justify judicial interference with the NMB's mediatory efforts, even if that statement had been meant to include future mediation. Acknowledging the extremely limited judicial review of NMB decisions, the court of appeals observed that "we cannot see how we could find patent official bad faith solely on the basis of a statement by the Board that mediation could not in the future work." Pet. App. 7a n.3. Only objective factors, such as proof of a completely unreasonable time period during which the Board has held a union in mediation without progress toward an agreement, not subjective statements of opinion by one Board member, can possibly show that the NMB has acted in patent official bad faith. *Id.*

Finally, the court held that the very existence of the procedural agreement shows the fallacy of the IAM's reading of the Chairman's remark. The procedural agreement created a very real possibility that settlement could be reached between the IAM and carriers because

"the IAM's implacability might well soften, if after [the procedural agreement] runs its course, a settlement between the railroads and the other 11 unions comes about." Pet. App. 8a. Therefore, the court rejected the IAM's contention that the Chairman's remark somehow signals " 'a lack of any genuine hope or expectation that the parties will arrive at an agreement.' " *Id., quoting International Association of Machinists v. National Mediation Board*, 425 F.2d 527, 537 (D.C. Cir. 1970) ("*IAM*").

In short, the court of appeals held that no "great legal significance" could be placed on the Chairman's remark. Pet. App. 7a. The IAM offered the court of appeals no other evidence of patent official bad faith. The court therefore affirmed the district court's decision dismissing the IAM's action.

D. Status of the PEB Procedures

While the IAM and the rail carriers were engaged in this litigation, the procedures established by the agreement among the NMB, the rail carriers, and the other unions were running their course.

In May 1990, the PEB commenced extensive hearings at which carriers and unions were given a full opportunity to express their views on the disputed labor issues. At the PEB's request, and with the agreement of the parties, the President twice extended the date for completion of the PEB's report. On January 15, 1991, the PEB issued its 94-page report, making detailed recommendations on the various issues in dispute.

The parties continued to negotiate during the 30-day period following the release of the PEB report, and they then agreed to extend that period for an additional 60 days so that negotiations could continue. Three of the participating unions reached new agreements with the carriers, but the other eight unions and the carriers failed to settle their disputes during the 90-day period following the PEB report.

On April 17, 1991, those eight unions commenced a nationwide strike. Congress promptly intervened. On the same day as the strike began, Congress moved to end it by passing H.J. Res. 222, which the President signed into law in the early morning hours of April 18, 1991. Under Pub. L. No. 102-29, 105 Stat. 169, Congress returned the striking workers to their jobs and announced that the recommendations of the PEB would be imposed as a new collective bargaining agreement between the parties, unless those recommendations were modified in proceedings before a new Special Board established by the statute, or unless the parties reached a different agreement on their own.

To give the parties an opportunity to seek clarification or modification of the PEB's recommendations, Congress directed the President to appoint a three-member Special Board to consider and rule on any such requests submitted by the parties. Congress specified a tight timetable for the Special Board's work, and it instructed the Special Board to accord a presumption of validity to the PEB's recommendations. Pub. L. No. 102-29 § 3.

On June 11, 1991, the Special Board issued its report on requests for clarification of the PEB recommendations. The Board interpreted and clarified a substantial number of the recommendations. On July 18, 1991, the Special Board issued its report on requests for modification of the PEB recommendations. The Board generally declined to disturb the PEB recommendations, as clarified. Under Sections 1(3) and 3(e) of Pub. L. No. 102-29, the PEB's recommendations, as interpreted and clarified by the Special Board, became effective as a new collective bargaining agreement at 12:01 a.m. on July 29, 1991.

ARGUMENT

Further review of the court of appeals' decision is not warranted. The court of appeals correctly upheld the district court's conclusion that the NMB had not abused its discretion in deciding to continue mediation with the IAM. The lower courts properly recognized that Congress has given the NMB extraordinarily wide latitude to resolve disputes through mediation, and that the permissible scope of judicial intervention is "one of the narrowest known to the law." In light of the IAM's failure to present any evidence of "patent official bad faith" on the part of the NMB, the court of appeals correctly refused to intervene in the mediation process. The court of appeals' decision is consistent with prior law under the Railway Labor Act, and does not conflict with any decision of this Court or the lower federal courts.

This case does not in fact raise the question that the IAM presents for review. The IAM asks whether the NMB "lawfully may insist that a union first waive its statutory right to strike before it may make use of the dispute resolution procedures available under [the Act]." But the NMB did not insist on any such waiver. None of the unions involved in the procedural agreement surrendered its right to strike. Eight of the unions that participated in the procedural agreement actually did strike, thus proving that they never relinquished that right.

Moreover, the IAM does not challenge the legal standards applied by the district court and the court of appeals. Those standards, which afford the NMB broad discretion in deciding whether to continue mediation have been well-established by this Court and the lower federal courts, and are well-suited to the NMB's statutory mandate to use mediation to help reduce the risk of crippling strikes.

Developments since the filing of the IAM's lawsuit make this case a particularly poor candidate for further

review. On July 18, 1991, the Special Board refused to modify the PEB's recommendations, and those recommendations now constitute a new collective bargaining agreement between the carriers and the unions that participated in the PEB proceedings. It is now even more likely that further mediation with the IAM will generate a resolution of the disputes involving that union. The PEB's recommendations for settlement between the parties to the procedural agreement, as adopted by Congress, may well serve as a model for a settlement between the IAM and the carriers. Judicial intervention now would merely undermine the Act's purpose of encouraging negotiated resolutions.

I. CONGRESS HAS GIVEN THE NMB EXTRAORDINARILY WIDE LATITUDE TO RESOLVE DISPUTES THROUGH MEDIATION.

The standards against which the NMB's conduct in mediation decisions should be weighed have been elaborately detailed by this Court and the lower federal courts. Remarkably, the IAM has failed even to cite, much less attempt to distinguish, several key appellate decisions in this area—*Trans World Airlines*, 839 F.2d 900, *Local 808*, 888 F.2d 1428, and *IAM*, 425 F.2d 537.

One of the central purposes of the Act is to encourage amicable settlements of contract disputes in the railroad and airline industries, so that the nation will be spared "any interruption to commerce or to the operation of any carrier." 45 U.S.C. § 152 First. To this end, the Act establishes elaborate "machinery to prevent strikes" and the resulting interruptions of interstate commerce. *Detroit & Toledo Shore Line Railway v. United Transportation Union*, 396 U.S. 142, 149 (1969). This elaborate statutory framework is purposefully long and drawn out; indeed, the Act was designed to make the remedial scheme an "almost interminable process." *Id.* at 149; *see also IAM*, 425 F.2d at 534.

To facilitate the NMB's duty to "use its best efforts" to assist the parties in resolving a dispute, the Act scrupulously avoids prescribing the methods by which the NMB must discharge its statutory obligations. 45 U.S.C. § 155 First. Compulsory procedures would unnecessarily bind the hands of the NMB and compromise its effectiveness. *Local 808*, 888 F.2d at 1436. Thus, the Act sets no time limits within which the NMB must conclude its mediation services, and the statute gives the NMB extraordinarily wide latitude in determining when mediation has run its course. *IAM*, 425 F.2d at 540.

Because the dynamics of the mediation process are intricate and laden with subjective considerations, courts generally stay their hand rather than substitute their views for the expert judgment of a mediator. Such deference is necessary because, as this Court has recognized, "[t]he effectiveness of [the Act's] private dispute resolution procedures depends on the . . . assurance that neither party will be able to enlist the courts to further its own partisan ends." *Trans World Airlines v. Independent Federation of Flight Attendants*, 489 U.S. 426, 441 (1989).

In light of these considerations, the courts have established for NMB decisions a standard of judicial review that is "one of the narrowest known to the law." *Trans World Airlines*, 839 F.2d at 811. Only in extremely rare cases does the Act permit judicial review of NMB decisions to continue mediation over the objection of one or more parties to a labor dispute. *IAM*, decided in 1970, is the leading case concerning the discretion of the NMB to hold parties in mediation under the Act. The *IAM* court overturned a decision ordering the NMB to conclude mediation of a contract dispute to which the IAM, petitioner here, was a party. The court held that jurisdiction to scrutinize NMB decisions is highly circumscribed, and that courts must exercise "utmost restraint" before de-

ciding to terminate a process that the NMB itself has not terminated. 425 F.2d at 537.

A reviewing court has jurisdiction to provide a remedy only "if the Board continues mediation on a basis that is *completely and patently arbitrary* and for a period of time that is *completely and patently unreasonable*, notwithstanding the lack of any genuine hope or expectation that the parties will arrive at an agreement." 425 F.2d at 537 (emphasis added). The NMB "is entitled to as strong a presumption as the legislature," *id.* at 540, because a "vigorous presumption of validity" shields the NMB from the "resentment or pique" of combatants in a labor dispute and truly confines judicial review to the most "extraordinary and exceptional situation." *Id.* at 542, 543.

The extremely limited authority of courts to review NMB mediation decisions is demonstrated by the stringent standards courts have used in applying the broad principles described above. A reviewing court, for example, may "rely only on . . . *objective data*," not the subjective opinions or conclusory suppositions of parties that have become embittered during the course of protracted negotiations or frustrated by perceived mediation delays. *IAM*, 425 F.2d at 540 (emphasis added). "Absent a showing of *patent official bad faith*, a court has no authority to review the Board's decision to keep a dispute in mediation." *Local 808*, 888 F.2d at 1434 (emphasis added). Moreover, during judicial review of NMB mediation decisions, no second-guessing is permitted. *Id.* at 1436. The NMB must be given "the benefit of any doubt" and "if any state of facts might be supposed that would support its action, those facts must be presumed to exist." *IAM*, 425 F.2d at 540. The IAM does not challenge any of these principles here.

The crucial inquiry is "whether there is a reasonable possibility of conditions and circumstances (including attitudes and developments) . . . sufficient to justify the

Board's judgment that the possibility of settlement is strong enough to warrant continuation of the mediation process." *IAM*, 425 F.2d at 541. This Court has approved of the burdens imposed on a party seeking review of NMB mediation determinations because "[t]he concept of mediation is the antithesis of justiciability." *General Comm. of Adjustment v. Missouri-Kansas-Texas R.R.*, 320 U.S. 323, 337 (1943).

II. THE NMB ACTED WELL WITHIN ITS DISCRETION IN DECIDING TO CONTINUE MEDIATION WITH THE IAM

The IAM fails to present any objective facts from which this Court could find that the NMB acted with "patent official bad faith." Petitioner relies almost entirely on NMB Chairman Javits' alleged remark that "mediation had failed."[3] Pet. App. 4a. Assuming that the statement was actually made, the IAM misconceives its legal effect.

First, the remark, standing alone, is insufficient to establish patent official bad faith. A reviewing court may "rely only on . . . objective data," not the subjective opinions or conclusory suppositions of one member of the NMB during the course of protracted mediation. *IAM*, 425 F.2d at 540; *see also Local 808*, 888 F.2d at 1435-1437. As Judge Leventhal explained in *IAM*, any judicial inquiry that goes beyond the objective facts and seeks to explore the NMB's reasoning would be "destructive of the mediation process in general, including future cases not yet born." *IAM*, 425 F.2d at 540. When the objective facts are examined in this case, the conclusion is inescapable that the NMB acted properly.

Second, even if a court could determine whether the NMB had acted in patent official bad faith based solely

[3] Counsel for the IAM conceded at oral argument before the court of appeals that the legal effect of this statement would be decisive. Pet. App. 7a n.3.

on an alleged statement by one member of the Board, the fact that there are plausible alternative explanations for the statement in question would preclude such a determination in this case. The remark may well have been a legitimate mediatory "ploy" uttered as a "tactic to spur negotiations." Pet. App. 8a. Furthermore, the Act permits the NMB to terminate mediation and proffer arbitration only if mediatory efforts "shall be unsuccessful." 45 U.S.C. § 155 First. Chairman Javits' statement refers only to the present state of mediation, and is not a prognosis of future success or failure: "It could be said at any stage in a mediation process prior to a successful conclusion of a collective bargaining agreement that mediation up to that point had failed." Pet. App. 7a.

In these circumstances, the courts below were obliged to reject the IAM's position because "if any state of facts might be supposed that would support [the NMB's] action, those facts must be presumed to exist." *IAM*, 425 F.2d at 540.

Nor can the IAM hope to show patent official bad faith by relying on the existence of the procedural agreement itself. The procedural agreement was a proper attempt by the NMB to "use its best efforts, by mediation, to bring [the parties] to agreement." 45 U.S.C. § 155 First. This "mediation device" was well within the NMB's discretion, and furthered the Act's goal of "settl[ing] a dispute without a strike." Pet. App. 6a, 7a. It in no way violates any provision of the Act, and does not "offend other laws." *Id.* at 7a. As the court of appeals stressed in *Local 808*, mediation is "an art-form." 888 F.2d at 1436. The Act "nowhere defines mediation" because to do so would unnecessarily prevent the NMB from developing creative devices for bringing recalcitrant parties to the negotiating table. Pet. App. 7a.

The procedural agreement was purely voluntary. No railroad or union was forced to enter the agreement. The

IAM chose not to participate in the industry-wide agreement, as it had every right to do. The NMB, in turn, chose not to release the IAM from mediation, as it had every right to do. This is precisely the basis on which the district court rejected the IAM's complaint. A. 197.

III. THE NMB'S DECISION TO CONTINUE MEDIATION WITH THE IAM WAS PROPER BECAUSE ADDITIONAL MEDIATION MAY WELL PROVE TO BE SUCCESSFUL

By agreeing to the appointment of a PEB that would be given adequate time to investigate and report on all disputed collective bargaining issues in national negotiations, the participants in the procedural agreement created a real prospect for an industry-wide resolution of existing disputes. It has frequently been the case in the railroad industry that, when the carriers have reached agreement with one or more unions on a particular bargaining issue, that agreement has served as a model for agreements on the same issue with other unions that remain in negotiations. This process, known as "pattern bargaining," has been particularly common on issues as to which the unions or the carriers have urged the adoption of industry-wide, or nearly industry-wide, agreements. A. 59.

Thus, in April 1990 when the NMB notified the IAM that it would not terminate mediation, there was a very real possibility that the procedural agreement would lead to settlements between the carriers and the other railroad unions and that, against the background of such settlements, future mediation with the IAM would be fruitful. On that ground alone, the NMB's decision was properly upheld. *IAM*, 425 F.2d at 541 (NMB needs only "reasonable possibility" of a settlement); *International Association of Machinists v. NMB*, 725 F. Supp. 558, 562 (D.D.C. 1989) (NMB decision upheld "because the prospect for a voluntary settlement remains").

Now, of course, by virtue of Pub. L. No. 102-29, a resolution has in fact been reached with respect to all the parties to the procedural agreement. On July 18, 1991, the Special Board upheld the recommendations made in the PEB's January 15 report. On July 29, 1991, those recommendations became binding on the parties to the procedural agreement "as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.)." Pub. L. No. 102-29 §§ 1(3), 3(e).

The contract terms established under Pub. L. No. 102-29 address virtually all of the issues that divide the IAM and the carriers. In its complaint, the IAM affirmatively alleged that its bargaining positions and those of the IBEW, one of the unions directly affected by the PEB recommendations, were identical. A. 7-8. The fact that the IBEW and the other railroad unions have come to terms with the railroads enhances the prospects that those terms will play a significant role in further mediation between the IAM and the carriers. There is a substantial possibility, therefore, that further mediation could bring about a settlement involving the IAM. The NMB should not be compelled to release the IAM from mediation before that process is given a chance to forge a settlement based on Pub. L. No. 102-29 and the report of the PEB.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 9, 1991

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APPENDIX

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NATIONAL RAILWAY LABOR CONFERENCE MEMBERS

Akron and Barberton Belt
Alaska Railroad
Alton & Southern
Atchison, Topeka & Santa Fe
Atlanta & St. Andrews Bay

Bangor & Aroostook
Belt Railway of Chicago
Bessemer & Lake Erie
Birmingham Southern
Burlington Northern

Canas Prairie
Canadian National Lines in U.S.
Canadian Pacific Lines in U.S.
Central Vermont
Chicago & Illinois Midland
Chicago & North Western Transportation
Chicago Short Line
Chicago South Shore & South Bend
Chicago, West Pullman & Southern
Colorado & Wyoming
Columbia & Cowlitz
Consolidated Rail Corporation
CSX Transportation, Inc.

Davenport, Rock Island & North Western
Denver & Rio Grande Western
Denver Union Terminal
Detroit & Mackinac
Duluth, Missabe & Iron Range
Duluth, Winnipeg & Pacific

East Erie Commercial
Elgin, Joliet & Eastern

Grand Trunk Western

Houston Belt & Terminal

Illinois Central Railroad
Indiana Harbor Belt

Kansas City Southern-Louisiana & Arkansas
Kansas City Terminal

Lake Superior & Ishpeming
Lake Terminal
Long Island Rail Road
Longview, Portland & Northern
Los Angeles Junction

Manufacturers Railway Co.
Meridian & Bigbee
Metro-North Commuter Rail
Minnesota, Dakota & Western
Mississippi Export
Missouri Pacific
Monongahela
Monongahela Connecting

National Railroad Passenger Corporation
New Jersey Transit Rail Operations, Inc.
New Orleans Public Belt
New Orleans Union Passenger Terminal
Norfolk & Portsmouth Belt Line
Norfolk & Western
Norfolk Southern Corp.
Norfolk Southern Railway
Northern Indiana Commuter Trans. Dist.
Northwestern Pacific

Ogden Union Railway & Depot

Peoria & Pekin Union
Philadelphia, Bethlehem & New England
Pittsburg & Shawmut
Pittsburgh & Lake Erie
Pittsburgh & Ohio Valley

Pittsburgh, Chartiers & Youghiogheny
Port Authority Trans-Hudson
Portland Terminal Railroad
Port Terminal Railroad Association
Providence & Worcester

Richmond, Fredericksburg & Potomac
    Acca Yard
    Potomac Yard

St. Louis Southwestern
Soo Line
Southern Pacific

Terminal Railway, Alabama State Docks
Terminal Railroad Association of St. Louis
Texas Mexican

Union Pacific
Union Railroad (Pittsburgh)

Wichita Terminal Association

Youngstown and Southern